Filed 2/25/16 P. v. Williams CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. JAMES WILLIAMS, Defendant and Appellant.	B259898 (Los Angeles County Super. Ct. No. BA403093)

APPEAL from a judgment of the Superior Court of Los Angeles County, Anne H. Egerton, Judge. Affirmed.

Alex Green, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Stephanie A. Miyoshi, Deputy Attorney General, for Plaintiff and Respondent.

James Williams (Williams) was convicted of attempted murder (Pen. Code, §§ 664 and 187, subd.(a)[1]) and shooting from a motor vehicle (§26100, subd. (c)). The jury, inter alia, also found true gang enhancement allegations (§ 186.22, subd. (b)(1)(C)). Williams was sentenced to 40 years to life in prison. On appeal, Williams makes three core contentions: (1) the gang enhancement allegations should have been dismissed at the close of the People's case due to a lack of credible evidence that the crimes were done to benefit a gang; (2) even if the gang enhancements were supported by substantial evidence, the sentence constitutes cruel and unusual punishment in that Williams was only 18 years 7 months and 23 days old at the time of the shooting; and (3) the 40-years-to-life sentence violates his right to equal protection. We disagree with all three contentions and, accordingly, affirm the judgment.

BACKGROUND

A. THE SHOOTING

On June 17, 2012, at approximately 3:00 p.m., Sherman Floyd (Floyd) returned to his neighborhood in Los Angeles after playing basketball with friends. Although Floyd's neighborhood was within the territory of two gangs, the 51 Troubles and the 5-Deuce Hoovers, Floyd was not a member of (or otherwise associated with) either of those gangs; in fact, he had never been a member of any gang.

As Floyd and his friends walked away from their car, Floyd saw a car drive past on West 51st Street. In the front passenger seat, Floyd saw an "old friend," Williams. Floyd and Williams had attended the same middle school for one year, had played "Pop Warner" football at the same time from 2008 to 2009, and had even hung out once at a party. Although Floyd and Williams were not close friends, they had a "friendly relationship" and there had never been any "animosity or conflict" between them.

---

[1] All further statutory references are to the Penal Code unless otherwise indicated.

The car reversed and then stopped near Floyd. Floyd walked up to the car and had a short, three to four minute, friendly conversation with Williams about football.[2] At one point in the conversation, Williams asked "Where the Hoovers at?" or "Where the Snoovers at?"[3] Before turning away, Floyd said to Williams, "be safe"; he said this because "the gangs [were] crazy right now" and he "didn't want to see [Williams] get shot or nothing like that."

As Floyd turned away from the car a volley of pistol shots erupted from the car, three of which struck Floyd in the chest.[4] After the shooting, the car in which Williams was riding left the scene in a "hurry."

As a result of the shooting, Floyd was hospitalized for two months and underwent seven surgeries, one of which resulted in the removal of part of one lung, thereby ending his dreams of playing football in college and perhaps professionally.[5]

B. BEFORE TRIAL, WILLIAMS CONTESTS THE GANG ENHANCEMENT ALLEGATIONS

On September 28, 2013, the People filed a felony complaint charging Williams with attempted murder and alleging various weapon and gang enhancements. On

---

[2] At trial, Williams confirmed that his conversation with Floyd was a "friendly type of conversation" about "football and music."

[3] "Snoover" is a term used by rival gangs to "diss Hoover." Floyd did not recall what, if anything, he said in response to the question. Although Floyd conceded on cross-examination that he had not said anything about a "Hoover/Snoover" question in either his recorded statement to the police or during his testimony at the preliminary hearing, Williams confirmed that such a question was asked during his conversation with Floyd immediately before the shooting, but stated that it was the driver of the car who asked, "Where the Hoovers at?" and, according to Williams, Floyd answered, "They usually right here."

[4] At trial, Williams took the stand in his own defense and testified that it was the driver who shot Floyd, that he had not seen the gun before the shooting, and did not know the driver would shoot Floyd.

[5] Williams testified that after the shooting he got out of the car as soon as practicable and took the bus home. Although he had a cell phone at the time of the shooting, Williams never called 911. Although he considered Floyd a friend, a "bro," Williams never contacted the police about the shooting and never contacted Floyd or his family afterwards to inquire about his recovery.

September 29, 2012, police arrested Williams in connection with the shooting of Floyd. A preliminary hearing was convened on November 16 and November 19, 2012, at the conclusion of which Williams moved to dismiss the gang enhancement due to a lack of evidence establishing that the crime was done for the benefit of a gang. In particular, Williams highlighted the absence of any other gang members at the shooting or any "bragging" about the shooting by Williams or his gang. The trial court denied the motion, finding that there was sufficient evidence for the underlying substantive count and the accompanying special allegations.

An information alleging one count of attempted murder along with special weapon and gang enhancement allegations was filed against Williams on December 3, 2012. On that same day, at his arraignment, Williams pleaded not guilty.

On May 29, 2013, William moved to dismiss the gang enhancement allegation, arguing, inter alia, that "no evidence was presented by any witness [at the preliminary hearing] to prove that the crime was committed with other 46 Neighborhood gang members, that any gang signs, symbols, or colors were displayed during the incident, that there was any bragging by Mr. Williams relating to the shooting . . . ." The People opposed the motion, arguing, inter alia, that the evidence showed that Williams was a member of the 46 Neighborhood Crips—Williams had tattoos associated with the gang and photos in his phone showing him displaying gang signs associated with the 46 Neighborhood Crips. The evidence also showed that the primary activities of the 46 Neighborhood Crips included murders and attempted murders and that a daylight shooting in front of witnesses in the heart of a rival gang's territory would inure to the benefit of the gang: such a shooting "causes members of the community to become fearful of the gang, which causes them to become reluctant to report crimes committed by gang members, out of fear of retaliation from that gang." On July 9, 2013, the trial court denied the motion to dismiss the gang enhancement allegation.

The People filed an amended information on June 20, 2014, adding a second count for shooting from a motor vehicle. This second count was accompanied by special allegations for weapons and gang enhancements.

On October 1, 2014, on the eve of trial, Williams moved to bifurcate the trial of the substantive offenses from the gang enhancements, asserting that evidence related to criminal gang street culture and habits would be inflammatory and unduly prejudicial. The People opposed the motion, arguing that the gang enhancement allegations were inextricably intertwined with the underlying substantive offenses. The trial court denied the motion to bifurcate on that same day.

C. THE PEOPLE'S GANG ENHANCEMENT EVIDENCE

The evidence offered by the People at trial to support the gang enhancement allegations falls into two basic categories: evidence establishing that Williams was a member of the 46 Neighborhood Crips, a known criminal gang; and expert evidence about the 46 Neighborhood Crips and how the shooting would benefit that gang.

With regard to Williams's membership in the 46 Neighborhood Crips, the People adopted a layer-cake approach, layering evidence found in Williams' room on top of evidence found in his phone, with evidence found on his person. For example, in Williams's bedroom the following was found etched into the headboard of the bed: "NAYBKORHK46D" and "46." According to the gang detective leading the investigation into the Floyd shooting, an officer with extensive experience with gangs, including the 46 Neighborhood Crips, the "K" usually represents "Killer" and its placement after a "B" typically signifies "Blood Killer"; similarly, the placement of the "K" after an "H" would signify "Hoover Killer." The headboard also had a "St. Andrews" and "Gramercy" etched into it—both were streets in Los Angeles and the "one block stretch" was the "homeland for the 46 Neighborhood Crips." In addition, on the side of the headboard, "B" and "K" were etched in the wood and an "H" was crossed out, which signified "H-Killer. Police found these etchings significant because the Hoovers were the "main rival" to the 46 Neighborhood Crips.

After Williams's arrest, the police reviewed the contents of his cellular phone and found "multiple photos of [Williams] as well as videos of [Williams], which suggested gang involvement." For example, police found photos of Williams throwing gang signs promoting the 46 Neighborhood Crips and/or "dissing" their main rival, the Hoovers;

police also discovered photos of Williams wearing or holding certain commercial items associated with the 46 Neighborhood Crips and/or some of its more established members.

With regard to tattoos, the People presented evidence that before his arrest, Williams had an "F"—representing "4"—tattooed on his right arm and an "S"—representing "6"—tattooed on his left arm, but no facial tattoos.[6] Following his arrest, Williams acquired a tattoo on the left side of his face with the following initials: "F.S.C.," which, in the argot of Los Angeles gangs, stands for "46 CRIP." The postshooting and postarrest appearance of the "F.S.C." tattoo drew the focus of police gang experts because "in order to put certain tattoos on your body, you have to have done certain things" for the gang. Such a tattoo constituted a form of bragging because it would have had to have been approved by his "Big Homie"—that is, by Williams's patron/mentor in the gang.

In addition, the People presented the testimony of several police officers who had field contacts with Williams. For example, on September 2, 2012 and again on September 29, 2012, police officers found Williams in the company of other members of the 46 Neighborhood Crips and a closely aligned gang, the Rolling 40s. On each occasion, Williams admitted to police officers that he was a member of the 46 Neighborhood Crips.

Finally, the People offered the expert testimony of Terrence Collins (Collins), an experienced officer from the 77th Gang Enforcement Detail, whose responsibilities included monitoring the activities of the 46 Neighborhood Crips. Among other things, Collins opined on a hypothetical crime whose facts closely mirrored the facts of the instant case. Collins believed that such a brazen, "risky" crime committed in "broad daylight" would benefit the 46 Neighborhood Crips in several ways. First, it would

---

[6] The People also offered testimony that other members of the 46 Neighborhood Crips, including Williams's purported gang mentor, had identical tattoos on their arms.

generate fear among other rival gangs and intimidate them.[7] Second, it would sow fear and intimidation among members of the community, discouraging them from talking with the police. Third, by generating fear in the community, such a crime would make it easier for the gang to commit more crimes with little fear of being caught. Collins based his opinion on his training, experience, interactions with gang members and their families, and reports (oral and written) provided to him by other police officers.

DISCUSSION

A. SUBSTANTIAL EVIDENCE SUPPORTED THE GANG ENHANCEMENT FINDING

On October 9, 2014, at the close of the People's case-in-chief, Williams moved, pursuant to section 1118.1,[8] to dismiss the gang enhancement allegation due to a lack of evidence that the shooting of Floyd was done for the benefit of a gang. Williams argued that the People's evidence amounted to nothing more than "speculation and generalizations."

The trial court denied the motion on three principal grounds: (1) the "first responders" on the scene had testified that "members of the community, neighbors and bystanders" "were out on the street surrounding the victim"; (2) testimony indicated that Williams had obtained a tattoo after the incident and the expert testified that the tattoo had to be "approved by some higher up" because it was "sort of a reward or acknowledgment for certain conduct"; and (3) Floyd testified that Williams asked about the Hoovers or Snoovers. The court stated it was not limiting its denial to those factors,

---

[7] Williams testified that a shooting benefits a gang by "making a statement" to the victim and to the gang to which he or she belongs, as well as to the victim's friends and associates.

[8] Section 1118.1 provides in pertinent part: "In a case tried before a jury, the court on motion of the defendant or on its own motion, at the close of the evidence on either side and before the case is submitted to the jury for decision, shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if the evidence then before the court is insufficient to sustain a conviction of such offense or offenses on appeal."

but was instead basing the denial on "all of the testimony presented."[9] Williams argues on appeal that the court erred in so ruling. We disagree.

1. Standard of review

"An appellate court reviews the denial of a section 1118.1 motion under the standard employed in reviewing the sufficiency of the evidence to support a conviction." (*People v. Houston* (2012) 54 Cal.4th 1186, 1215.) "'[W]e do not determine the facts ourselves. Rather, we "examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special circumstance allegations. [Citation.] "[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding." [Citation.] We do not reweigh evidence or reevaluate a witness's credibility.'" (*Ibid*.) Notably, however, "[r]eview of the denial of a section 1118.1 motion made at the close of a prosecutor's case-in-chief focuses on the state of the evidence as it stood at that point." (*Ibid*.)

As we explain below, Williams's claim regarding the denial of his gang enhancement motion lacks merit.

2. The People presented substantial evidence in support of the gang enhancement allegation

Section 186.22, subdivision (b)(1), in pertinent part, provides as follows: "any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or

---

[9] After the People rested, Williams offered, in addition to his own testimony, the testimony of an expert on proper police investigatory procedures. Williams, however, did not offer any countervailing expert testimony on gang culture and habits.

assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished . . . ."

To prove the enhancement applies in a given case, the crime must be demonstrated to be gang related. (*People v. Albillar* (2010) 51 Cal.4th 47, 60 (*Albillar*).) Cases, however, rarely involve "direct evidence that a crime was committed for the benefit of a gang." (*People v. Miranda* (2011) 192 Cal.App.4th 398, 411.) Consequently, evidence that the crime was committed for the benefit of a gang often comes via expert testimony. "Expert testimony is admissible to establish the existence, composition, culture, habits, and activities of street gangs; a defendant's membership in a gang; gang rivalries; the 'motivation for a particular crime, generally retaliation or intimidation'; and 'whether and how a crime was committed to benefit or promote a gang'" (*People v. Hill* (2011) 191 Cal.App.4th 1104, 1120.)

In assessing Williams's contention that the People's evidence was insufficient, we consider two relatively recent cases decided by our Supreme Court on this very issue, *Albillar*, *supra*, 51 Cal.4th 47, and *People v. Vang* (2011) 52 Cal.4th 1038 (*Vang*).

In *Albillar*, three fellow gang members were convicted of forcible rape in concert, forcible sexual penetration in concert, and the gang participation offense (§ 186.22, subd. (a)). The jury also found true gang enhancement allegations (§ 186.22, subd. (b)(1)) on the sex offenses. (*Albillar*, *supra*, 51 Cal.4th at pp. 50–51.) The issues on appeal included whether there was sufficient evidence to support the jury's findings on both prongs of the gang enhancement allegations. (*Id.* at p. 51.) Aside from the victim's testimony that the defendants cooperated with one another to commit the offenses and evidence that persons affiliated with the defendants threatened to harm the victim and her family if they reported the crimes to the police, the remaining evidence came from the gang expert. (*Id.* at pp. 52–54.) The gang expert in *Albillar* testified that "'[w]hen three gang members go out and commit a violent brutal attack on a victim'" that elevates their individual status and reputation and that "'the overall entity benefits and strengthens as a result of it'" and that reports of such conduct raise the "'level of fear and

intimidation in the community.'" (*Id.* at p. 63.) The gang expert "applied his analysis to a hypothetical based on the facts of the crime . . . , where the victim knew that at least two of her assailants were members of [the] Southside Chiques" gang and opined that it was "'[*m*]*ore than likely*'" this crime was reported "by way of mainstream media or by way of word of mouth," not as three individuals committing a rape, but as members of the gang committing a rape, which elevates the gang's "'reputation to be a violent, aggressive gang that stops at nothing and does not care for anyone's humanity.'" (*Id.* at p. 63, italics added.) Although there was no evidence that the gang's reputation had been actually enhanced by the rape, the Supreme Court held that "[e]xpert opinion that particular criminal conduct benefited a gang by enhancing its reputation for viciousness can be sufficient to raise the inference that the conduct was 'committed for the benefit of . . . a [ ] criminal street gang' within the meaning of section 186.22[, subd.] (b)(1)." (*Ibid.*)

A jury convicted the four defendants in *Vang*, *supra*, 52 Cal.4th 1038, three of whom admitted membership in a criminal street gang, of assault by means of force likely to produce great bodily injury after they attacked an individual who at one time associated with the gang. The jury also found true gang enhancement allegations (§ 186.22, subd. (b)(1)). (*Vang*, *supra*, 52 Cal.4th at p. 1041.) At trial, the prosecution's gang expert responded to two hypothetical questions that closely tracked the evidence in the case by opining that the assault was "'gang-motivated.'" (*Id.* at p. 1043.) The expert based his opinion that the assault was "'gang-motivated'" on evidence that (1) the victim had at one time associated with gang members, (2) the victim was lured from his garage to the spot where the attack occurred, and (3) the attack "'was done in concert with known documented gang members'" who worked together to attack the victim. (*Ibid.*) On appeal, the defendants argued that the trial court erred when it allowed the expert to testify in response to a "'thinly disguised'" hypothetical that the attack was committed for the benefit of the gang and was gang motivated. (*Id.* at p. 1044.) The Supreme Court disagreed and held that an expert may "express an opinion, based on hypothetical questions that tracked the evidence, whether the [crime], if the jury found it in fact

occurred, would have been for a gang purpose." (*Id*. at p. 1048.) "It is required, not prohibited, that hypothetical questions be based on the evidence. The questioner is not required to disguise the fact the questions are based on that evidence." (*Id*. at p. 1041.) Quoting *Albillar*, *supra*, 51 Cal.4th 47, the court reiterated its view that "'[e]xpert opinion that particular criminal conduct benefited a gang' is not only permissible but can be sufficient to support the . . . gang enhancement." (*Vang*, at p. 1048.)

In arguing that the People's evidence was insufficient with respect to the gang enhancement allegations, Williams cites *People v. Ochoa* (2009) 179 Cal.App.4th 650 (*Ochoa*). In *Ochoa*, a lone gang member committed a carjacking. Based on the defendant's tattoos and admissions, the prosecution's experts testified that the defendant was a gang member. (*Id.* at pp. 653–654.) These experts also testified that the defendant committed the carjacking for the benefit of the gang, even though they acknowledged that the gang's signature crime was car theft and that car theft was distinct from carjacking. (*Id*. at pp. 654–656.) After hearing the prosecution's expert testimony, the jury found the gang enhancement true. The Court of Appeal reversed, noting that "[t]here was no evidence that *only* gang members committed carjackings or that a gang member could not commit a carjacking for personal benefit, rather than for the benefit of the gang." (*Id*. at p. 662.) The *Ochoa* court also focused on the absence of evidence, stating: the defendant "did not call out a gang name, display gang signs, wear gang clothing, or engage in gang graffiti while committing the instant offenses. There was no evidence of bragging or graffiti to take credit for the crimes. There was no testimony that the victim saw any of defendant's tattoos. There was no evidence the crimes were committed in [the defendant's gang's] territory or the territory of any of its rivals. There was no evidence that the victim of the crimes was a gang member or a [gang] rival. Defendant did not tell anyone . . . that he had special gang permission to commit the carjacking. [Citation.] Defendant was not accompanied by a fellow gang member." (*Id*. at p. 662, fn. omitted.)

Williams's reliance on *Ochoa*, *supra*, 179 Cal.App.4th 650, is misplaced for a number of reasons. First, unlike the defendant in *Ochoa*, Williams committed a criminal offense that the gang expert identified as being one of the primary activities of the 46

Neighborhood Crips (i.e., attempted murder). Second, unlike the defendant in *Ochoa*, Williams committed a crime that cannot reasonably, or at least not easily, be regarded as one for personal benefit as opposed to the benefit of a gang—in *Ochoa*, the defendant committed a carjacking; here, Williams shot a nongang member, an innocent civilian with whom he had been on friendly terms, in broad daylight in front of witnesses. Third, there was evidence that while Williams did not flash any gang signs or make any statements to Floyd or to any of the witnesses revealing his affiliation with the 46 Neighborhood Crips, the shooting here, unlike the robbery in *Ochoa*, was committed in the heart of a rival gang's territory. Fourth, there was expert testimony that the postshooting/postarrest gang-related tattoo on Williams's face was a form of gang-endorsed, public bragging about the crime. Thus, even though Williams did not make any affirmative gestures displaying his gang membership before, during, or immediately after the shooting, the particularities of the crime provide substantial evidence to reasonably find that the shooting was committed for the benefit, or in furtherance of the 46 Neighborhood Crips.

Prior decisions have looked, correctly, at the overall particularities of the crime to help determine whether a gang enhancement was supported by the evidence. For example, in *People v. Galvez* (2011) 195 Cal.App.4th 1253, 1261, the Court of Appeal affirmed a gang enhancement finding even though "no one called out the gang's name," due, in principal part to the nature of the crime itself: "The crimes were committed for the benefit of the gang because [as the gang expert explained], the gang members' act of severely beating [the victim] in a public place in gang territory 'promotes fear, which, in essence, promotes their gang and their brutality to the community in which they live.'" Similarly, in *People v. Romero* (2006) 140 Cal.App.4th 15, 19, the court found that there was sufficient evidence to support a gang enhancement finding where the prosecution's expert testified that the "shooting of any African–American men [by a gang member] would elevate the status of the shooter and their entire [Latino] gang."

Moreover, as Collins, the People's gang expert, noted, gang tactics are changing: "[n]owadays, I don't really get caught up in the colors, because gang members have

become a little bit smarter and they don't necessarily wear colors like they did back in the '80s where it was easier to say 'That's a Blood," or 'That's a Crip,' based upon their colors. Now , the colors are not so much a factor in regards to that. [¶] . . . [¶] [B]lue is still a Crip color. . . . [B]ut, again, I don't get caught up in the colors, because a lot of times [gang members] try to throw us off, as police officers, by wearing different colors." The fact that Williams did not wear blue, or a particular baseball cap traditionally associated with his gang or call out "46 Neighborhood Crips rule!" or "Die, Snoovers, die!" or some such self-identifying slogan as he shot Floyd, should not preclude the People from offering other types of evidence from which it can reasonably be inferred that a crime was gang-related. Put differently, we cannot be bound to outmoded ways of thinking about gangs and the modus operandi by which they commit their crimes.

In short, under *Albillar*, *supra*, 51 Cal.4th 47, and *Vang*, *supra*, 52 Cal.4th 1038, the trial court (and ultimately, the jury) could rely on Collins's testimony, as well as on all of the other testimony offered by the People in their case in chief, in finding that the gang enhancement allegations were supported by substantial evidence. (See *Albillar*, at pp. 63–68; *Vang*, at p. 1048.) As the gang enhancement allegations were supported by substantial evidence, we affirm the trial court's decision to deny Williams's motion to dismiss.

B. THE SENTENCE WAS NOT CRUEL AND UNUSUAL

After nine days of testimony and argument, the jury began deliberating on the afternoon of October 16, 2014. The following afternoon, after little more than a day of deliberation, the jury returned a guilty verdict on both counts and also found the weapon and gang enhancement allegations to be true. On October 28, 2014, the trial court sentenced Williams to 40 years to life.

Williams does not contend that the trial court erred in calculating the sentence; in fact, Williams concedes that the trial court had "no sentencing discretion," that the sentence was "set by law." Instead, Williams contends that the sentence was constitutionally infirm— because he was barely more than 18 and a half years old at the time of the shooting, a 40-year-to-life sentence constitutes cruel and unusual punishment.

(U.S. Const., 8th Amend.; Cal. Const., art. I, § 17 [prohibiting cruel or unusual punishment].)

However, as the Attorney General correctly notes, Williams did not raise this argument (or present any evidence in support thereof) during the proceedings below. "A claim a sentence is cruel and unusual is forfeited on appeal if it is not raised in the trial court because the issue often requires a fact-bound inquiry." (*People v. Speight* (2014) 227 Cal.App.4th 1229, 1247.) As the court in *People v. Russell* (2010) 187 Cal.App.4th 981 explained, such an argument should be raised "in the trial court where the trial judge, having heard all of the evidence, would be in a position to assess the validity of [defendant's] claims for impairment and make assessments as to their impact, if any, on the constitutionality of the sentence in this case." (*Id.* at p. 993.) Although Williams has technically forfeited this issue on appeal, we "shall reach the merits under the relevant constitutional standards, in the interest of judicial economy to prevent the inevitable ineffectiveness-of-counsel claim." (*People v. Norman* (2003) 109 Cal.App.4th 221, 230; see *People v. Em* (2009) 171 Cal.App.4th 964, 971 & fn. 5 [same].)

A sentence violates the federal Constitution only if it is """grossly disproportionate""" to the severity of the crime. (*Graham v. Florida* (2010) 560 U.S. 48, 59–60 [130 S.Ct. 2011, 176 L.Ed.2d 825] (*Graham*); *People v. Carmony* (2005) 127 Cal.App.4th 1066, 1076.) A punishment violates the California Constitution if, "although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch* (1972) 8 Cal.3d 410, 424, fn. omitted; *People v. Em*, *supra*, 171 Cal.App.4th at p. 972.)

The United States Supreme Court and our California Supreme Court have issued a line of cases about cruel and unusual punishment for juvenile offenders (i.e., those under the age of 18): the death penalty may not be imposed on juvenile offenders (*Roper v. Simmons* (2005) 543 U.S. 551 [125 S.Ct. 1183, 161 L.Ed.2d 1] (*Roper*)); life without the possibility of parole (LWOP) may not be imposed on a juvenile who commits a nonhomicide offense (*Graham*, *supra*, 560 U.S. 48); mandatory LWOP may not be

imposed on a juvenile offender (*Miller v. Alabama* (2012) 567 U.S. ___ [132 S.Ct. 2455, 183 L.Ed.2d 407] (*Miller*)); a de facto LWOP sentence may not be imposed on a juvenile nonhomicide offender (*People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*)). On appeal, Williams relies on these cases to argue that his sentence constitutes cruel and unusual punishment.

Williams, however, was not a juvenile at the time he shot Floyd. In addition, the sentence is not LWOP; as Williams concedes, he will be "eligible for parole at approximately age 58." Nor is the sentence the functional equivalent of LWOP; as Williams acknowledges, his life expectancy ranges from a low of 64.6 years to 80 years, leaving him with the potential to live a meaningful life decades after being paroled.

Moreover, California courts have repeatedly rejected Williams's argument that he should be considered a juvenile for purposes of punishment due to the "scientific and medical consensus that the adolescent brain is still not developed" by 18 years of age. As with his cruel and unusual punishment claim, Williams failed to raise this equal protection argument in the trial court and, as a result, has waived it on appeal. (*People v. Pecci* (1999) 72 Cal.App.4th 1500, 1503.) But even on the merits his argument is unpersuasive.

"'Guarantees of equal protection embodied in the Fourteenth Amendment of the United States Constitution and article I, section 7 of the California Constitution prohibit the state from arbitrarily discriminating among persons subject to its jurisdiction.'" (*People v. Chavez* (2004) 116 Cal.App.4th 1, 4.) "The constitutional guarantee of equal protection of the laws has been defined to mean that all persons under similar circumstances are given '"equal protection and security in the enjoyment of personal and civil rights . . . and the prevention and redress of wrongs. . . ."' [Citation.] The concept '"'compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.'"'" (*Pederson v. Superior Court* (2003) 105 Cal.App.4th 931, 939, 130 Cal.Rptr.2d 289.) "'Under the equal protection clause, "[a] classification 'must be reasonable, not arbitrary, and must rest upon some grounds of difference having a fair and substantial relation to the object of the legislation,

so that all persons similarly circumstanced shall be treated alike.’”’” (*People v. Wilder* (1995) 33 Cal.App.4th 90, 104.)

To succeed on an equal protection claim a defendant must (1) show that ‘“‘“the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner . . . .”’”; and (2) establish that “there is no rational relationship to a legitimate state purpose for the state’s having made a distinction between the two similarly situated groups.” (*People v. Cavallaro* (2009) 178 Cal.App.4th 103, 110, fn. omitted.) The analysis will not proceed beyond the first requirement “if the groups at issue are not ‘“similarly situated with respect to the legitimate purpose of the law.”’ (*In re Jose Z.* (2004) 116 Cal.App.4th 953, 960.)

Here, Williams cannot satisfy the first requirement—he is not similarly situated with a defendant under the age of 18 with respect to the legitimate purpose of the law. As the United States Supreme Court has explained, “Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. . . . . [H]owever, *a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood*.” (*Roper*, *supra*, 543 U.S. at p. 574, italics added.) We decline Williams’s invitation to redraw the well-established line between childhood and adulthood for sentencing purposes merely because “it has been a decade since *Roper* was decided.” The well-established line between childhood and adulthood for sentencing purposes was re-affirmed by the United States Supreme Court in *Graham* five years after *Roper*: “Because ‘[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,’ those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime.” (*Graham*, *supra*, 560 U.S. at pp. 74–75.) Moreover, and contrary to Williams, we do not read *Hall v. Florida* (2014) 572 U.S. ___ [134 S.Ct. 1986, 188 L.Ed.2d 1007] as “an indication that [the Supreme] Court recognizes it should re-examine the sharp line drawn

in *Roper*." *Hall* was not concerned with the line dividing childhood from adulthood; rather, that case was concerned with something entirely different—the line separating intellectually disabled persons from those who are not. (*Hall*, 134 S.Ct. at pp. 2000–2001].)

As we find that Williams has failed to demonstrate that two similarly situated groups have been treated in an unequal manner by the sentencing laws, we reject his equal protection claim and affirm the judgment.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.